

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUAN TOMAS DIAZ-CHANG

Plaintiff-Appellant,

- v -

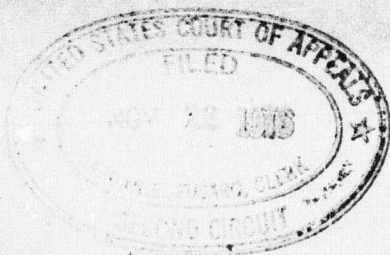
MAURICE F. KILEY, District Director,
U.S. Immigration & Naturalization Service

Defendant-Appelle.

APPELLANT'S SUPPLEMENTARY BRIEF

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P/S



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUAN TOMAS DIAZ-CHANG,

Plaintiff-Appellant,

- against -

MAURICE F. KILEY, District Director,
U.S. Immigration and Naturalization Service,

Defendant-Appelle.

Docket No. 76-4223

APPELLANT'S SUPPLEMENTAL BRIEF

STATEMENT OF THE CASE

Pursuant to 8 U.S.C. Section 1105(a), Plaintiff-Appellant, Juan Toams Diaz-Chang, (hereinafter referred to as Diaz) filed a petition for judicial review of an order of the Board of Immigration Appeals issued 10/13/76, dismissing his appeal from th denial of his motion to reopen his deportation proceeding by a Special Inquiry Officer of the Immigration and Naturalization Service on August 3, 1976.

STATEMENT OF THE FACTS

Plaintiff-Appellant, Diaz, is a native and citizen of Ecuador. He was admitted into the United States as a non-immigrant visitor for pleasure on April 1, 1971. He was authorized to remain in this country until October 16, 1971, and thereafter overstayed his leave.

On February 8, 1976, Mr. Diaz was arrested and taken into custody by agents of the Immigration and Naturalization Service as a result of a search conducted on the premises where he was employed. A number of other employees were arrested and taken into custody during that same search including five legal residents of the United States. Plaintiff-Appellant, Diaz, was questioned by agents of the Immigration and Naturalization Service at 20 West Broadway, New York, New York, without the presence of counsel. During that questioning he made incriminatory statements. On February 9, 1976, while in custody at the Federal Detention Facility at Brooklyn, New York, Plaintiff-Appellant, Diaz, was served with an order to show cause why he should not be deported from the United States pursuant to Section 241 (a) (2) of the Immigration and Nationality Act, 8 U.S.C. Section 1251 (a) (2) as a non-resident who had remained in the United States longer than authorized.

On February 10, 1976, Plaintiff-Appellant, Diaz, appeared at a deportation hearing held at the Federal Detention Center in Brooklyn, New York. He was represented by counsel with whom he had a chance to consult only briefly, however, prior to the hearing. Plaintiff-Appellant was found deportable and ordered to leave the United States on or before March 26, 1976. On March 23, 1976, Plaintiff-Appellant, Diaz, by his counsel, made an application to the District Direction to extend his voluntary departure date in order for him to make a motion to reopen his deportation proceedings. As a

result of investigation, Plaintiff-Appellant had cause to believe that the search which resulted in his arrest was legally deficient under the standards of the Fourth Amendment of the United States Constitution. Plaintiff-Appellant's application was denied by the District Director , and on March 26, 1976, Plaintiff-Appellant, Diaz, submitted a motion to reopen his deportation proceedings and simultaneously a request to the District Director to stay his deportation pursuant to the determination of his motion. The application for a stay of his deportation was denied by the District Director on July 1, 1976. The motion to reopen his deportation proceeding was denied by the Special Inquiry Officer on August 3, 1976.

STATEMENT OF THE ISSUES PRESENTED

WHETHER THERE WAS A WAIVER OF PLAINTIFF-APPELLANT'S RIGHT TO A HEARING AS PROVIDED BY 8 C.F.R. 242.22

WHETHER PLAINTIFF-APPELLANT WAIVED HIS RIGHT TO RAISE THE ISSUE OF THE SEARCH IN WHICH HE WAS ARRESTED.

WHETHER DEFENDANT-APPELLE IN ARRESTING PLAINTIFF-APPELLANT AS A RESULT OF A SEARCH BASED ON A WARRANT ISSUED WITHOUT PROBABLE CAUSE VIOLATED PLAINTIFF-APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH AMMENDMENT TO THE U.S. CONSTITUTION.

ARGUMENTS

See Appellant's Brief in Docket #76-6132, pps 6 - 13.

CONCLUSION

The Board of Immigration's decision dismissing Appellant's appeal from the denial of his motion to reopen his deportation proceeding should be reversed. Appellant should be granted a new deportation hearing.

Respectfully submitted,

LINDA ATLAS, ESQ.
Attorney for Plaintiff-Appellant